

ENVIRONMENTAL PROTECTION COMMISSION[567]**Notice of Intended Action**

Twenty-five interested persons, a governmental subdivision, an agency or association of 25 or more persons may demand an oral presentation hereon as provided in Iowa Code section 17A.4(1)“b.”

Notice is also given to the public that the Administrative Rules Review Committee may, on its own motion or on written request by any individual or group, review this proposed action under section 17A.8(6) at a regular or special meeting where the public or interested persons may be heard.

Pursuant to the authority of Iowa Code sections 455B.173, 459.103 and 459A.104, the Environmental Protection Commission proposes to amend Chapter 60, “Scope of Title—Definitions—Forms—Rules of Practice,” Chapter 63, “Monitoring, Analytical and Reporting Requirements,” Chapter 64, “Wastewater Construction and Operation Permits,” and Chapter 65, “Animal Feeding Operations,” Iowa Administrative Code.

As required by the Iowa General Assembly earlier this year, the proposed amendments update the Department’s rules regarding confinement feeding operations to conform with 2008 federal regulations pertaining to NPDES permits. In addition, the proposed amendments include revisions to open feedlot rules and related NPDES rules as necessary to conform to the 2008 federal regulations and several “housekeeping” type corrections and updates.

The Commission specifically seeks public comment regarding Item 38, proposed new subrule 65.17(53), and Item 49, proposed new subrule 65.112(12). Federal regulations allow states to authorize the use of either the linear approach or the narrative approach, or both, in expressing the rates of application in a nutrient management plan. The proposed amendments incorporate by reference the federal regulations for both approaches. The Commission seeks comment on whether both approaches should be authorized or whether only one of the approaches should be authorized.

Any interested person may make written suggestions or comments on the proposed amendments on or before January 11, 2011. Written comments should be directed to Gene Tinker, Iowa Department of Natural Resources, Wallace State Office Building, 502 E. 9th Street, Des Moines, Iowa 50319-0034; fax (515)281-8895; or E-mail gene.tinker@dnr.iowa.gov.

Also, there will be public hearings as follows, at which time persons may present their views either orally or in writing:

January 4, 2011	6 p.m.	Northeast Iowa Community College Dairy Center, Room 115 1527 Highway 150 South Calmar
January 5, 2011	6 p.m.	Lime Creek Nature Center 3501 Lime Creek Road Mason City
January 6, 2011	6 p.m.	Washington County Conservation Board Education Center, Marr Park 2943 Highway 92 Ainsworth
January 10, 2011	6 p.m.	Clay County Administration Building Boardroom 300 W. 4th Street Spencer
January 11, 2011	11 a.m.	Wallace State Office Building Fourth Floor Conference Room 502 E. 9th Street Des Moines

At the hearings, persons will be asked to give their names and addresses for the record and to confine their remarks to the subject of the proposed amendments.

Any persons who intend to attend a public hearing and have special requirements, such as those related to hearing or mobility impairments, should contact the Department of Natural Resources and advise of specific needs.

These amendments are intended to implement Iowa Code chapters 455B, 459, 459A, and 459B and 2010 Iowa Acts, Senate File 2248.

The following amendments are proposed.

ITEM 1. Amend rule 567—60.1(455B,17A) as follows:

567—60.1(455B,17A) Scope of title. The department has jurisdiction over the surface water and groundwater of the state to prevent, abate and control water pollution by establishing standards for water quality and for direct or indirect discharges of wastewater to waters of the state and by regulating potential sources of water pollution through a system of general rules or specific permits. The construction and operation of any wastewater disposal system and the discharge of any pollutant to a water of the state require a specific permit from the department, unless exempted by the department.

This chapter provides general definitions applicable in this title and rules of practice, including forms, applicable to the public in the department's administration of the subject matter of this title.

Chapter 61 contains the water quality standards of the state, including classification of surface waters. Chapter 62 contains the standards or methods for establishing standards relevant to the discharge of pollutants to waters of the state. Chapter 63 identifies monitoring, analytical and reporting requirements pertaining to permits for the operation of wastewater disposal systems. Chapter 64 contains the standards and procedures for obtaining construction, operation and NPDES permits for wastewater disposal systems ~~other than those associated with~~ and animal feeding operations. Chapter 65 specifies minimum waste control requirements and additional permit requirements for animal feeding operations. Chapter 66 specifies restrictions on pesticide application to waters. Chapter 67 contains standards for the land application of sewage sludge. Chapter 68 contains standards and licensing requirements applicable to commercial septic tank cleaners. Chapter 69 specifies guidelines for private sewage disposal systems.

ITEM 2. Amend rule 567—60.2(455B), introductory paragraph, as follows:

567—60.2(455B) Definitions. ~~The~~ In addition to the definitions in Iowa Code sections 455B.101 and 455B.171, the following definitions apply to this title, unless otherwise specified in the particular chapter of this title:

ITEM 3. Amend the following definitions in rule **567—60.2(455B)**:

“Act” means the Federal Water Pollution Control Act as amended through ~~July 1, 2007~~ January 3, 2007, 33 U.S.C. §1251 et seq.

“CFR” or *“Code of Federal Regulations”* means the federal administrative rules adopted by the United States in effect as of July 1, ~~2008~~ 2010. The amendment of the date contained in this definition shall constitute the amendment of all CFR references contained in 567—Chapters 60 to 69, Title IV, unless a date of adoption is set forth in a specific rule.

“Minor permit amendment” or *“minor modification”* means a permit modification made with the consent of the permittee that occurs as a result of any of the following:

1. to 4. No change.
5. Deletion of a point source outfall that does not result in the discharge of pollutants from other outfalls; ~~or~~
6. Incorporation of an approved local pretreatment program; ~~or~~
7. Incorporation of changes to the terms of a CAFO's nutrient management plan that has been revised in accordance with the requirements of 40 CFR 122.42(e)(6).

“Storm water” means storm water runoff, snow melt runoff and surface runoff and drainage. (NOTE: Agricultural storm water runoff is excluded by federal regulation 40 CFR 122.3(e) ~~as amended through June 15, 1992.~~)

“Storm water discharge associated with industrial activity” means the discharge from any conveyance which is used for collecting and conveying storm water and which is directly related to manufacturing, processing or raw materials storage areas at an industrial plant. The term does not include discharges from facilities or activities excluded from the NPDES program under 40 CFR Part 122 ~~as amended through June 15, 1992.~~ For the categories of industries identified in paragraphs “1” to “10” of this definition, the term includes, but is not limited to, storm water discharges from industrial plant yards; immediate access roads and rail lines used or traveled by carriers of raw materials, manufactured products, waste material, or by-products used or created by the facility; material handling sites; refuse sites; sites used for the application or disposal of process wastewaters (as defined at 40 CFR 401 ~~amended through June 15, 1992~~); sites used for the storage and maintenance of material handling equipment; sites used for residual treatment, storage, or disposal; shipping and receiving areas; manufacturing buildings; storage areas (including tank farms) for raw materials, and intermediate and finished products; and areas where industrial activity has taken place in the past and significant materials remain and are exposed to storm water.

For the categories of industries identified in paragraphs “1” to “9” and “11,” the term includes only storm water discharges from all the areas (except access roads and rail lines) that are listed in the previous sentence where material handling equipment or activities, raw materials, intermediate products, final products, waste materials, by-products, or industrial machinery are exposed to storm water. For the purposes of this paragraph, material handling activities include the: storage, loading and unloading, transportation, or conveyance of any raw material, intermediate product, finished product, by-product or waste product. To qualify for this exclusion, a storm-resistant shelter is not required for: drums, barrels, tanks and similar containers that are tightly sealed with bands or otherwise secured and have no taps or valves, are not deteriorated and do not leak; adequately maintained vehicles used in material handling; and final products other than products that would be mobilized in storm water discharge. The term excludes areas located on plant lands separate from the plant’s industrial activities, such as office buildings and accompanying parking lots as long as the drainage from the excluded areas is not mixed with storm water drained from the above described areas. Industrial facilities (including industrial facilities that are federally, state, or municipally owned or operated) that meet the description of the facilities listed in paragraphs “1” to “11” of this definition include those facilities designated under 40 CFR 122.26(a)(1)(v) as amended through December 8, 1999. The following categories of facilities are considered to be engaging in “industrial activity” for purposes of this definition:

1. to 11. No change.

“Storm water point sources” means point sources that serve to collect, channel, direct, and convey storm water and which are subject to Section 402(p) of the federal Clean Water Act and Parts 122, 123, and 124 of Title 40 of the Code of Federal Regulations (~~as amended through June 15, 1992~~).

ITEM 4. Amend paragraph **60.3(2)“c”** as follows:

c. Form 34 — open feedlots and confinement feeding operations 542-4001.

ITEM 5. Amend rule 567—60.4(455B,17A), introductory paragraph, as follows:

567—60.4(455B,17A) Application procedures and requirements generally. The following general procedures and requirements pertain to applications for wastewater construction permits, operation permits and NPDES permits. More specific and substantive requirements may be found in 567—Chapters 61 to 65.

ITEM 6. Amend paragraph **63.1(1)“a”** as follows:

a. The following is adopted by reference: 40 Code of Federal Regulations (CFR) Part 136, ~~revised as of July 1, 2007.~~

ITEM 7. Amend subrule 63.2(3) as follows:

63.2(3) ~~The~~ Except as required by 567—Chapter 65, the permittee shall retain for a minimum of three years all paper and electronic records of monitoring activities and results including all original strip chart recordings for continuous monitoring instrumentation and calibration and maintenance records. This retention includes but is not limited to monitoring and calibration records from pH meters, dissolved oxygen meters, total residual chlorine meters, and flow meters; and temperature readings from any composite samplers. The period of retention shall be considered to be extended during the course of any unresolved litigation or when an extension is requested by the director or the regional administrator.

ITEM 8. Rescind and reserve rule **567—63.5(455B)**.

ITEM 9. Adopt the following new rule 567—63.15(455B,459,459A,459B):

567—63.15(455B,459,459A,459B) Applicability. This chapter shall apply to all waste disposal systems treating or intending to treat sewage, industrial waste, or other waste except waste resulting from livestock or poultry operations. Livestock and poultry operations constituting animal feeding operations as defined in 567—Chapter 65 shall be governed by the requirements contained in 567—Chapter 65. Except as provided in 567—Chapter 65, a CAFO as defined in 567—Chapter 65 that is required to seek coverage under an NPDES permit shall also comply with applicable provisions of this chapter relating to records of monitoring activities and results, bypasses and upsets, certification and signatory requirements in the submission of records of operation, 24-hour reporting, planned changes, and anticipated noncompliance. Where the provisions of this chapter and 567—Chapter 65 are inconsistent, 567—Chapter 65 shall apply.

ITEM 10. Amend subrule 64.3(1), introductory paragraph, as follows:

64.3(1) Except as otherwise provided in this subrule, in 567—Chapter 65, and in 567—Chapter 69, no person shall operate any ~~wastewater~~ disposal system or part thereof without, or contrary to any condition of, an operation permit issued by the director. An operation permit is not required for the following:

ITEM 11. Amend subparagraph **64.7(2)“f”(1)** as follows:

(1) Necessary to meet water quality standards, treatment or pretreatment standards, or schedules of compliance established pursuant to any Iowa law or regulation, or to implement the ~~antidegradation~~ antidegradation policy in 567—subrule 61.2(2); or

ITEM 12. Adopt the following new subrule 64.7(7):

64.7(7) CAFOs. See additional terms and conditions for CAFO NPDES permits in 567—Chapter 65.

ITEM 13. Amend rule 567—64.14(455B) as follows:

567—64.14(455B) Transfer of title or owner address change. ~~If~~ Except as provided in 567—Chapter 65, ~~if~~ title to any disposal system or part thereof for which a permit has been issued under 567—64.2(455B), 567—64.3(455B) or 567—64.6(455B) is transferred, the new owners shall be subject to all terms and conditions of said permit. Whenever title to a disposal system or part thereof is changed, the department shall be notified in writing of such change within 30 days of the occurrence. No transfer of the authorization to discharge from the facility represented by the permit shall take place ~~prior to notifying before~~ the department is notified of the transfer of title. Whenever the address of the owner is changed, the department shall be notified in writing within 30 days of the address change. Electronic notification is not sufficient; all title transfers or address changes must be reported to the department by mail.

ITEM 14. Amend rule 567—64.18(455B) as follows:

567—64.18(455B,459,459A,459B) Applicability. This chapter shall apply to all waste disposal systems treating or intending to treat sewage, industrial waste, or other waste except waste resulting from livestock or poultry operations. ~~All livestock~~ Livestock and poultry operations constituting animal

feeding operations as defined in 567—Chapter 65 shall be governed by the requirements contained in 567—Chapter 65. ~~However, if an animal feeding operation is required to apply for and obtain an NPDES permit, the~~ Except as provided in 567—Chapter 65, a CAFO as defined in 567—Chapter 65 that is required to seek coverage under an NPDES permit shall also comply with applicable provisions of this chapter relating to the permit to operate, issuance of NPDES permits, notice and public participation, to the terms and conditions of the permit, to the and reissuance of the permit and to monitoring, reporting and record-keeping activities shall apply. Where the provisions of this chapter and 567—Chapter 65 are inconsistent, 567—Chapter 65 shall apply.

ITEM 15. Amend rule 567—65.1(459,459B), introductory paragraph, as follows:

567—65.1(459,459B) Definitions. In addition to the definitions in Iowa Code sections 455B.101 ~~and~~, 455B.171 and ~~Iowa Code section 459.102~~ and in 567—Chapter 60, the following definitions shall apply to Division I of this chapter:

ITEM 16. Amend the following definitions in rule **567—65.1(459,459B)**:

“Animal feeding operation” or “AFO” means a lot, yard, corral, building, or other area in which animals are confined and fed and maintained for 45 days or more in any 12-month period, and all structures used for the storage of manure from animals in the operation. Except as required for an NPDES permit required pursuant to the ~~federal Water Pollution Control Act, 33 U.S.C. Chapter 26~~, an animal feeding operation does not include a livestock market; ~~Open open~~ feedlots and confinement feeding operations are considered to be separate animal feeding operations.

1. For purposes of water quality regulation, Iowa Code section 459.301 as amended by 2009 Iowa Acts, House File 735, section 6, provides that two or more animal feeding operations under common ownership or management are deemed to be a single animal feeding operation if they are adjacent or utilize a common area or system for manure disposal. For purposes of the air quality-related separation distances in Iowa Code section 459.202, Iowa Code section 459.201 provides that two or more animal feeding operations under common ownership or management are deemed to be a single animal feeding operation if they are adjacent or utilize a common system for manure storage. The distinction is due to regulation of animal feeding operations for water quality purposes under the federal Clean Water Act. ~~The Code of Federal Regulations at 40 CFR §122.23 (2008) sets out the requirements for an animal feeding operation and requires that two or more animal feeding operations under common ownership be considered a single operation if they adjoin each other or if they use a common area or system for disposal of wastes.~~ However, this federal regulation does not control regulation of animal feeding operations for the purposes of the separation distances in Iowa Code section 459.202, and therefore the definition is not required by federal law to include common areas for manure disposal.

2. and 3. No change.

“Applicant” means the person applying for a construction ~~or operation~~ permit or an NPDES permit for a confinement feeding operation.

“Manure” means animal excreta or other commonly associated wastes of animals including, but not limited to, bedding, litter, or feed losses. Manure does not include wastewater resulting from the washing and in-shell packaging of eggs. For the purposes of NPDES permitting, manure includes manure, bedding, compost and raw materials or other materials commingled with manure or set aside for disposal.

“Public water supply system (PWS)” ~~(also referred to as a system or a water system)~~ means a system for the provision to the public of ~~pip~~ water for human consumption ~~of water for human consumption through pipes or other constructed conveyances~~, if such system has at least 15 service connections or regularly serves an average of at least 25 individuals daily at least 60 days out of the year. ~~Such term~~ PWS includes: (1) any collection, treatment, storage, and distribution facilities under control of the ~~supplier of water~~ operator of such system and used primarily in connection with such system; ~~and~~ (2) any collection ~~(including wells)~~ or pretreatment storage facilities not under such control which are used primarily in connection with such system. PWS does not include any “special irrigation district” as

defined in 567—40.2(455B). A public water supply system is either a “community water system” or a “noncommunity water system.”

ITEM 17. Rescind the definitions of “NPDES permit” and “Operation permit” in rule **567—65.1(459,459B)**.

ITEM 18. Adopt the following **new** definitions in rule **567—65.1(459,459B)**:

“*Concentrated animal feeding operation*” or “*CAFO*” means an AFO that is defined as a large CAFO, a medium CAFO, or a designated CAFO.

“*Designated CAFO*” means an AFO that has been designated as a CAFO pursuant to subrule 65.5(4).

“*Land application area*” means land under the control of an AFO owner or operator, whether it is owned, rented, or leased, to which manure, litter or process wastewater from the production area is or may be applied.

“*Large concentrated animal feeding operation*” or “*Large CAFO.*” An AFO is defined as a large CAFO if it stables or confines as many as or more than the numbers of animals specified in any of the following categories:

1. 700 mature dairy cows, whether milked or dry;
2. 1,000 veal calves;
3. 1,000 cattle other than mature dairy cows or veal calves. Cattle includes but is not limited to heifers, steers, bulls, and cow/calf pairs;
4. 2,500 swine each weighing 55 pounds or more;
5. 10,000 swine each weighing less than 55 pounds;
6. 500 horses;
7. 10,000 sheep or lambs;
8. 55,000 turkeys;
9. 30,000 laying hens or broilers, if the AFO uses a liquid manure handling system;
10. 125,000 chickens (other than laying hens), if the AFO uses other than a liquid manure handling system;
11. 82,000 laying hens, if the AFO uses other than a liquid manure handling system;
12. 30,000 ducks (if the AFO uses other than a liquid manure handling system); or
13. 5,000 ducks (if the AFO uses a liquid manure handling system).

“*Medium concentrated animal feeding operation*” or “*Medium CAFO.*” The term medium CAFO includes any AFO with the type and number of animals that fall within any of the ranges listed in paragraph “a” of this definition and which has been defined or designated as a CAFO. An AFO is defined as a medium CAFO if:

- a. The type and number of animals that it stables or confines fall within any of the following ranges:
 1. 200 to 699 mature dairy cows, whether milked or dry;
 2. 300 to 999 veal calves;
 3. 300 to 999 cattle other than mature dairy cows or veal calves. Cattle includes but is not limited to heifers, steers, bulls, and cow/calf pairs;
 4. 750 to 2,499 swine each weighing 55 pounds or more;
 5. 3,000 to 9,999 swine each weighing less than 55 pounds;
 6. 150 to 499 horses;
 7. 3,000 to 9,999 sheep or lambs;
 8. 16,500 to 54,999 turkeys;
 9. 9,000 to 29,999 laying hens or broilers, if the AFO uses a liquid manure handling system;
 10. 37,500 to 124,999 chickens (other than laying hens), if the AFO uses other than a liquid manure handling system;
 11. 25,000 to 81,999 laying hens, if the AFO uses other than a liquid manure handling system;
 12. 10,000 to 29,999 ducks (if the AFO uses other than a liquid manure handling system); or
 13. 1,500 to 4,999 ducks (if the AFO uses a liquid manure handling system); and
- b. Either one of the following conditions is met:

1. Pollutants are discharged into waters of the United States through a man-made ditch, flushing system, or other similar man-made device; or

2. Pollutants are discharged directly into waters of the United States which originate outside of and pass over, across or through the facility or otherwise come into direct contact with animals confined in the operation.

“*Nutrient management plan*” or “*NMP*” means a plan which provides for the management of manure, litter or process wastewater, including the application of manure, litter or process wastewater as provided in 567—65.17(459,459B).

“*Process wastewater*” means water directly or indirectly used in the operation of the AFO for any or all of the following: spillage or overflow from animal or poultry watering systems; washing, cleaning, or flushing pens, barns, manure pits, or other AFO facilities; direct contact swimming, washing, or spray cooling of animals; or dust control. Process wastewater also includes any water which comes into contact with any raw materials, products, or byproducts including manure, litter, feed, milk, eggs or bedding.

“*Production area*” means that part of an AFO that includes the area in which animals are confined, the manure storage area, the raw materials storage area, egg washing and egg processing facilities, and the waste containment areas. The area in which animals are confined includes, but is not limited to, open lots, housed lots, feedlots, stall barns, free stall barns, milk rooms, milking centers, cow yards, barnyards, medication pens, walkers, animal walkways, confinement houses, and stables. The manure storage area includes, but is not limited to, lagoons, solids settling facilities, settled open feedlot effluent basins, storage sheds, stockpiles, under house or pit storages, liquid impoundments, static piles, and composting piles. The raw materials storage area includes, but is not limited to, feed silos, silage bunkers, and bedding materials. The waste containment area includes, but is not limited to, settling basins and areas within berms and diversions which separate uncontaminated storm water. Also included in the definition of production area is any area used in the storage, handling, treatment, or disposal of mortalities.

“*Waters of the United States*” means the same as defined in 40 CFR 122.2.

ITEM 19. Amend subrule 65.2(3), introductory paragraph, as follows:

65.2(3) The minimum level of manure control for a confinement feeding operation shall be the retention of all manure produced in the confinement enclosures between periods of manure application and as specified in this rule. In no case shall manure from a confinement feeding operation be discharged directly into a water of the state or into a tile line that discharges to waters of the state. Manure from a confinement feeding operation shall be disposed of in a manner which will not cause surface water or groundwater pollution. Disposal in accordance with provisions of state law, and the rules and guidelines in this chapter, shall be deemed as compliance with this requirement.

ITEM 20. Amend subparagraph **65.2(3)“d”(2)** as follows:

(2) Applicable NPDES requirements pursuant to the ~~federal Water Pollution Control Act, 33 U.S.C. Ch. 26, and 40 CFR Pts. Parts~~ 122 and 412.

ITEM 21. Rescind subrule **65.2(6)**.

ITEM 22. Renumber subrules **65.2(7)** to **65.2(11)** as **65.2(6)** to **65.2(10)**.

ITEM 23. Amend rule 567—65.3(459,459B), introductory paragraph, as follows:

567—65.3(459,459B) Requirements and recommended practices for land application of manure. A confinement feeding operation which has obtained an NPDES permit pursuant to 567—65.6(459,459B) shall comply with the land application requirements specified in 65.6(2).

ITEM 24. Amend subrule 65.3(4), introductory paragraph, as follows:

65.3(4) Surface application of liquid manure on frozen or snow-covered ground. A person who applies liquid manure on frozen or snow-covered ground shall comply with applicable NPDES requirements pursuant to the ~~federal Water Pollution Control Act, 33 U.S.C. Chapter 26, and 40 CFR Parts 122 and 412,~~ and also shall comply with the following requirements:

ITEM 25. Rescind and reserve rule ~~567—65.4(459,459B)~~.

ITEM 26. Amend subrule 65.5(2) as follows:

65.5(2) If departmental evaluation determines that any of the conditions listed in subrule 65.5(1) exist, the operation shall:

~~a. Apply for an operation permit if the operation receives a written notification from the department that it is required to apply for an operation permit. However, no operation with an animal capacity less than that specified in the following subparagraphs shall be required to apply for a permit unless manure from the operation is discharged into a water of the state through a man-made manure drainage system or is discharged into a water of the state which traverses the operation:~~

- ~~(1) 300 beef cattle.~~
- ~~(2) 200 dairy cattle.~~
- ~~(3) 750 butcher and breeding swine (over 55 lbs.).~~
- ~~(4) 3000 sheep or lambs.~~
- ~~(5) 16,500 turkeys.~~
- ~~(6) 30,000 broiler or layer chickens.~~
- ~~(7) 150 horses.~~
- ~~(8) 300 animal units.~~

~~b. Institute~~ institute necessary remedial actions to eliminate the conditions if the operation receives a written notification from the department of the need to correct the conditions. This paragraph shall apply to all permitted and unpermitted animal feeding operations, regardless of animal capacity.

ITEM 27. Adopt the following **new** subrule 65.5(4):

65.5(4) Designated CAFO. The following is adopted by reference: 40 CFR 122.23(c).

ITEM 28. Amend rule 567—65.6(459,459B) as follows:

567—65.6(459,459B) Operation NPDES permits.

65.6(1) ~~Existing animal feeding operations holding an operation permit~~ Who must seek coverage under an NPDES permit. Animal feeding operations which hold a valid operation permit issued prior to July 22, 1987, are not required to reapply for an operation permit. However, the operations are required to apply for permit renewal in accordance with subrule 65.6(10). The following is adopted by reference: 40 CFR 122.23(a) and (d).

65.6(2) ~~Existing animal feeding operations not holding an operation permit~~ Land application discharges from a CAFO that are subject to NPDES permit requirements. Animal feeding operations in existence on July 22, 1987, which are covered by the operation permit provisions of subrule 65.4(1) or 65.4(2) but have not obtained a permit, shall apply for an operation permit prior to January 22, 1988. Once application has been made, the animal feeding operation is authorized to continue to operate without an operation permit until the application has either been approved or disapproved by the department. The following is adopted by reference: 40 CFR 122.23(e).

65.6(3) ~~Expansion of existing animal feeding operations~~ When an owner or operator of a CAFO must seek coverage under an NPDES permit. A person intending to expand an existing animal feeding operation which, upon completion of the expansion, will be covered by the operation permit provisions of subrule 65.4(1) or 65.4(2) shall apply for an operation permit at least 180 days prior to the date operation of the expanded facility is scheduled. Operation of the expanded portion of the facility shall not begin until an operation permit has been obtained. The following is adopted by reference: 40 CFR 122.23(f).

65.6(4) ~~New animal feeding operations~~ Duty to maintain permit coverage. A person intending to begin a new animal feeding operation which, upon completion, will be covered by the operation permit provisions of subrule 65.4(1) or 65.4(2) shall apply for an operation permit at least 180 days prior to the date operation of the new animal feeding facility is scheduled. Operation of the new facility shall not begin until an operation permit has been obtained. The following is adopted by reference: 40 CFR 122.23(g).

~~65.6(5) *Permits required as a result of departmental evaluation*~~ *No discharge certification option.* An animal feeding operation which is required to apply for an operation permit as a result of departmental evaluation (in accordance with the provisions of 65.5(2) “a”) shall apply for an operation permit within 90 days of receiving written notification of the need to obtain a permit. Once application has been made, the animal feeding operation is authorized to continue to operate without a permit until the application has either been approved or disapproved by the department. The following is adopted by reference: 40 CFR 122.23(i) and (j).

~~65.6(6) *Voluntary operation permit applications.*~~ Applications for operation permits received from animal feeding operations not meeting the operation permit requirements of subrules 65.4(1) to 65.4(3) will be acknowledged by the department and returned to the applicant. Operation permits will not be issued for facilities not meeting the permit requirements of subrules 65.4(1) to 65.4(3).

~~65.6(7) 65.6(6) *Application forms.*~~ An application for an operation NPDES permit shall be made on a form provided by the department. Form 34 as specified in 567—paragraph 60.3(2) “c.” The application shall be complete as specified in 567—paragraph 60.4(2) “a” and shall contain detailed information as ~~deemed necessary~~ required by the department. The application shall be signed by the person who is legally responsible for the animal feeding operation and its associated manure control system, and as specified in 567—subrule 64.3(8). At a minimum, the application must contain all information required in 40 CFR 122.21(i).

~~65.6(7) *Notice and public participation.*~~ Notice and public participation in the NPDES permit process shall comply with the requirements set forth in 567—64.5(455B).

~~65.6(8) *Compliance schedule.*~~ When necessary to comply with a present standard or a standard which must be met at a future date, an operation permit shall include a schedule for modification of the permitted facility to meet the standard. The schedule shall not relieve the permittee of the duty to obtain a construction permit pursuant to subrule 65.7(1). When necessary to comply with a standard which must be met at a future date, an NPDES permit shall include a schedule for modification of the permitted facility to meet the standard in accordance with 567—subrule 64.7(4).

~~65.6(9) *Permit conditions.*~~ Operation permits shall contain conditions considered necessary by the department to ensure compliance with all applicable rules of the department, to ensure that the manure control system is properly operated and maintained, to protect the public health and beneficial uses of state waters, and to prevent water pollution from manure storage or application operations. Self-monitoring and reporting requirements which may be imposed on animal feeding operations are specified in 567—subrule 63.5(1). The following is adopted by reference: 40 CFR 122.42(e).

~~65.6(10) *Permit renewal.*~~ An operation permit may be issued for any period of time not to exceed five years. An application for renewal of an operation permit must be submitted to the department at least 180 days prior to the date the permit expires. Each permit to be renewed shall be subject to the provisions of those rules of the department which apply to the facility at the time of renewal.

A permitted animal feeding operation which does not meet the operation permit requirements of subrules 65.4(1) to 65.4(3) will be exempted from the need to retain that permit at the time of permit renewal, and the existing operation permit will not be renewed.

~~65.6(11) *Permit modification, suspension or revocation.*~~ The department may modify, suspend, refuse to renew or revoke in whole or in part any operation NPDES permit ~~for cause~~ as specified in 567—subrule 64.3(11). Cause for modification, suspension or revocation of a permit may include the following:

- ~~a. Violation of any term or condition of the permit.~~
- ~~b. Obtaining a permit by misrepresentation of fact or failure to disclose fully all material facts.~~
- ~~c. A change in any condition that requires either a temporary or permanent reduction or elimination of the permitted discharge.~~
- ~~d. Failure to submit the records and information that the department requires in order to ensure compliance with the operation and discharge conditions of the permit.~~
- ~~e. A determination by the department that the continued operation of a confinement feeding operation constitutes a clear, present and impending danger to public health or the environment.~~

~~65.6(12) No change.~~

65.6(13) Effluent limitations and standards. The following is adopted by reference: 40 CFR Part 412.

ITEM 29. Amend paragraphs **65.10(5)“a”** to **“c”** as follows:

a. If the county board of supervisors does not submit a construction evaluation resolution to the department, fails to submit an adopted recommendation, submits only comments, or fails to submit comments, the department shall approve the application if the application meets the requirements of this chapter and Iowa Code ~~chapter 455B~~ chapters 459 and 459B. The department will disapprove the application if it does not meet such requirements.

b. If the board of supervisors for the county in which the confinement feeding operation is proposed to be constructed has filed a county construction evaluation resolution and submits an adopted recommendation to approve the construction permit application, which may be based on a satisfactory rating produced by the master matrix, to the department, the department shall preliminarily approve an application for a construction permit if the department determines that the application meets the requirements of this chapter and Iowa Code ~~chapter 455B~~ chapters 459 and 459B. The department shall preliminarily disapprove an application that does not satisfy the requirements of this chapter and Iowa Code ~~chapter 455B~~ chapters 459 and 459B regardless of the adopted recommendation of the board of supervisors. The department shall consider any timely filed comments made by the board as provided in this subrule to determine if an application meets the requirements of this chapter and Iowa Code ~~chapter 455B~~ chapters 459 and 459B.

c. If the board submits to the department an adopted recommendation to disapprove an application for a construction permit that is based on a rating produced by the master matrix, the department shall first determine if the application meets the requirements of this chapter and Iowa Code ~~chapter 455B~~ chapters 459 and 459B. The department shall preliminarily disapprove an application that does not satisfy the requirements of this chapter and Iowa Code ~~chapter 455B~~ chapters 459 and 459B regardless of any result produced by using the master matrix. If the application meets the requirements of this chapter and Iowa Code ~~chapter 455B~~ chapters 459 and 459B, the department shall conduct an independent evaluation of the application using the master matrix. The department shall preliminarily approve the application if it achieves a satisfactory rating according to the department’s evaluation. The department shall preliminarily disapprove the application if it produces an unsatisfactory rating regardless of whether the application satisfies the requirements of this chapter and Iowa Code ~~chapter 455B~~ chapters 459 and 459B. The department shall consider any timely filed comments made by the board as provided in this subrule to determine if an application meets the requirements of this chapter and Iowa Code ~~chapter 455B~~ chapters 459 and 459B.

ITEM 30. Amend subrule 65.10(10), introductory paragraph, as follows:

65.10(10) Complaint investigations. Complaints of violations of Iowa Code chapter 455B, 459 or 459B, ~~and this rule or this chapter~~, which are received by the department or are forwarded to the department by a county, following a county board of supervisors’ determination that a complainant’s allegation constitutes a violation, shall be investigated by the department if it is determined that the complaint is legally sufficient and an investigation is justified.

ITEM 31. Amend paragraph **65.10(10)“b”** as follows:

b. A complaint is legally sufficient if it contains adequate information to investigate the complaint and if the allegation constitutes a violation, without investigating whether the facts supporting the allegation are true or untrue, of rules adopted by the department, Iowa Code chapter 455B, 459 or 459B, or environmental standards in regulations subject to federal law and enforced by the department.

ITEM 32. Amend rule 567—65.16(459,459B), introductory paragraph, as follows:

567—65.16(459,459B) Manure management plan and nutrient management plan requirements. Manure management plan requirements are set forth in subrules 65.16(1) through 65.16(7) and 65.17(1) through 65.17(20). Nutrient management plan requirements are set forth in subrules 65.16(26) and 65.17(51) through 65.17(54).

ITEM 33. Reserve subrules **65.16(8)** to **65.16(25)**.

ITEM 34. Adopt the following **new** subrule 65.16(26):

65.16(26) A CAFO that is required to seek coverage under an NPDES permit as required in 65.6(1) must implement a nutrient management plan that, at a minimum, contains best management practices necessary to meet the requirements in 65.17(51) and 65.17(52) and all applicable effluent limitations and standards specified in 40 CFR Part 412.

ITEM 35. Amend rule 567—65.17(459,459B), introductory paragraph, as follows:

567—65.17(459,459B) Manure management plan and nutrient management plan content requirements. ~~All manure management plans are to be submitted on forms or electronically as prescribed by the department. The plans shall include all of the information specified in Iowa Code section 459.312 as amended by 2009 Iowa Acts, Senate File 432, section 2, and as described below. Manure management plan content requirements are set forth in subrules 65.17(1) through 65.17(20). Nutrient management plan content requirements are set forth in subrules 65.17(51) and 65.17(52).~~

ITEM 36. Amend subrule 65.17(1), introductory paragraph, as follows:

65.17(1) ~~General~~ *Manure management plans—general.* All manure management plans are to be submitted on forms or electronically as prescribed by the department. The plans shall include all of the information specified in 2009 Iowa Code Supplement section 459.312 and as described below.

ITEM 37. Reserve subrules **65.17(21)** to **65.17(50)**.

ITEM 38. Adopt the following **new** subrules 65.17(51) to 65.17(54):

65.17(51) Nutrient management plan content requirements. The nutrient management plan must, to the extent applicable:

- a. Ensure adequate storage of manure or process wastewater, including procedures to ensure proper operation and maintenance of the storage structures.
- b. Ensure proper management of animal mortalities to ensure that they are not disposed of in liquid manure, storm water, or process wastewater storage or treatment system that is not specifically designed to treat animal mortalities.
- c. Ensure that clean water is diverted, as appropriate, from the production area.
- d. Prevent direct contact of confined animals with waters of the United States.
- e. Ensure that chemicals or other contaminants handled on site are not disposed of in any manure, process wastewater, or storm water storage or treatment system unless specifically designed to treat such chemicals or other contaminants.
- f. Identify appropriate site-specific conservation practices to be implemented including, as appropriate, buffers or equivalent practices, to control runoff of pollutants to waters of the United States.
- g. Identify protocols for appropriate testing of manure, process wastewater, and soil.
- h. Establish protocols to land-apply manure or process wastewater in accordance with site-specific nutrient management practices that ensure appropriate agricultural utilization of the nutrients in the manure or process wastewater.
- i. Identify specific records that will be maintained to document the implementation and management of the minimum elements described in paragraphs “a” through “h” above.

65.17(52) Nutrient management plan record-keeping requirements.

- a. A copy of the CAFO’s site-specific nutrient management plan must be maintained on site and made available to the department upon request.
- b. The permittee must create, maintain for five years, and make available to the department, upon request, the following records:

- (1) All applicable records identified pursuant to 65.17(51) “i.”
- (2) In addition, all CAFOs subject to 40 CFR Part 412 must comply with the record-keeping requirements as specified in 40 CFR 412.37(b) and (c) and 40 CFR 412.47(b) and (c).

65.17(53) Terms of a nutrient management plan. The following is adopted by reference: 40 CFR 122.42(e)(5)(i) and (ii).

65.17(54) Changes to a nutrient management plan. The following is adopted by reference: 40 CFR 122.42(e)(6).

ITEM 39. Amend the following definitions in rule **567—65.100(455B,459,459A)**:

“Animal feeding operation” or *“AFO”* means a lot, yard, corral, building, or other area in which animals are confined and fed and maintained for 45 days or more in any 12-month period, and all structures used for the storage of manure from animals in the operation. Except as required for an NPDES permit required pursuant to the ~~federal Water Pollution Control Act, 33 U.S.C. Chapter 26, as amended,~~ an animal feeding operation does not include a livestock market.

“Large concentrated animal feeding operation” or *“large CAFO.”* An AFO is defined as a large CAFO if it stables or confines as many as or more than the numbers of animals specified in any of the following categories:

1. 700 mature dairy cows, whether milked or dry;
- ~~2. 1,000 cattle, including but not limited to heifers, steers, bulls, veal calves and cow/calf pairs;~~
- ~~2. 1,000 veal calves;~~
- ~~3. 1,000 cattle other than mature dairy cows or veal calves. Cattle includes but is not limited to heifers, steers, bulls, and cow/calf pairs;~~
- ~~3. 4. 2,500 swine each weighing 55 pounds or more;~~
- ~~4. 5. 10,000 swine each weighing less than 55 pounds;~~
- ~~5. 6. 500 horses;~~
- ~~6. 7. 10,000 sheep or lambs;~~
- ~~7. 8. 55,000 turkeys;~~
- ~~8. 9. 30,000 laying hens or broilers, if the AFO uses a liquid manure handling system;~~
- ~~9. 10. 125,000 chickens (other than laying hens), if the AFO uses other than a liquid manure handling system;~~
- ~~10. 11. 82,000 laying hens, if the AFO uses other than a liquid manure handling system;~~
- ~~12. 30,000 ducks (if the AFO uses other than a liquid manure handling system);~~
- ~~13. 5,000 ducks (if the AFO uses a liquid manure handling system); or~~
- ~~14. 1,000 animal units, where more than one category of animals is maintained using the same type of operation.~~

~~*“Manure”* means animal excreta or other commonly associated wastes of animals including, but not limited to, bedding, compost, litter, feed losses, raw materials or other materials commingled with manure or set aside for disposal includes manure, bedding, compost and raw materials or other materials commingled with manure or set aside for disposal.~~

“Medium concentrated animal feeding operation” or *“medium CAFO.”* The term medium CAFO includes any AFO with the type and number of animals that fall within any of the ranges listed in paragraph “a” of this definition and which has been defined or designated as a CAFO. An AFO is defined as a medium CAFO if:

- a. The type and number of animals that it stables or confines fall within any of the following ranges:
 - (1) 200 to 699 mature dairy cows, whether milked or dry;
 - ~~(2) 300 to 999 cattle, including but not limited to heifers, steers, bulls, veal calves and cow/calf pairs;~~
 - ~~(2) 300 to 999 veal calves;~~
 - ~~(3) 300 to 999 cattle other than mature dairy cows or veal calves. Cattle includes but is not limited to heifers, steers, bulls, and cow/calf pairs;~~
 - ~~(3) (4) 750 to 2,499 swine each weighing 55 pounds or more;~~
 - ~~(4) (5) 3,000 to 9,999 swine each weighing less than 55 pounds;~~
 - ~~(5) (6) 150 to 499 horses;~~
 - ~~(6) (7) 3,000 to 9,999 sheep or lambs;~~
 - ~~(7) (8) 16,500 to 54,999 turkeys;~~
 - ~~(8) (9) 9,000 to 29,999 laying hens or broilers, if the AFO uses a liquid manure handling system;~~
 - ~~(9) (10) 37,500 to 124,999 chickens (other than laying hens), if the AFO uses other than a liquid manure handling system;~~

~~(10)~~ (11) 25,000 to 81,999 laying hens, if the AFO uses other than a liquid manure handling system;
~~(12)~~ 10,000 to 29,999 ducks (if the AFO uses other than a liquid manure handling system);
~~(13)~~ 1,500 to 4,999 ducks (if the AFO uses a liquid manure handling system); or
~~(11)~~ (14) 300 to 999 animal units, where more than one category of animals is maintained using the same type of operation; and

b. Either one of the following conditions is met:

(1) Manure or process wastewater is discharged into waters of the United States through a man-made ditch, flushing system, or other similar man-made device; or

(2) Manure or process wastewater is discharged directly into waters of the United States which originate outside of and pass over, across or through the facility or otherwise come into direct contact with animals confined in the operation.

“*Waters of the United States*” means the same as defined in 40 CFR 122.2 ~~as that section existed on July 1, 2005.~~

ITEM 40. Rescind the definition of “NPDES permit” in rule **567—65.100(455B,459,459A)**.

ITEM 41. Adopt the following new definition of “Land application area” in rule **567—65.100(455B,459,459A)**:

“*Land application area*” means land under the control of an AFO owner or operator, whether it is owned, rented, or leased, to which manure, litter or process wastewater from the production area is or may be applied.

ITEM 42. Amend rule 567—65.102(455B,459A) as follows:

567—65.102(455B,459A) NPDES permits required for CAFOs. Concentrated animal feeding operations (CAFOs) are point sources that require NPDES permits if the conditions of 65.102(1) apply.

65.102(1) Duty to apply. Each CAFO owner or operator must apply for an NPDES permit if the CAFO discharges or proposes to discharge, except as provided in subrule 65.102(2). A CAFO proposes to discharge if it is designed, constructed, operated or maintained such that a discharge will occur. The owner or operator of a CAFO that includes an open feedlot must apply for an individual NPDES permit. The application procedures are prescribed in 567—65.104(455B,459A).

65.102(2) Exception. An open feedlot operation shall not be required to obtain an NPDES permit if the operation does not discharge or propose to discharge manure, process wastewater, settled open feedlot effluent, settleable solids, or open feedlot effluent into any waters of the United States.

65.102(3) No discharge certification. The following is adopted by reference: 40 CFR 122.23(i).

ITEM 43. Amend subrule 65.103(1) as follows:

65.103(1) ~~The department may evaluate any animal feeding operation that is not defined as a large or medium CAFO, and designate it as a CAFO if, after an on-site inspection, it is determined to be a significant contributor of manure or process wastewater to waters of the United States. In making this determination, the department shall consider the following factors:~~ Designated CAFO. The following is adopted by reference: 40 CFR 122.23(c).

~~a. The size of the operation and the amount of manure or process wastewater reaching waters of the United States;~~

~~b. The location of the operation relative to waters of the United States;~~

~~c. The means of conveyance of manure or process wastewater to waters of the United States;~~

~~d. The slope, vegetation, rainfall, and other factors affecting the likelihood or frequency of discharge of manure or process wastewater into waters of the United States; and~~

~~e. Other relevant factors.~~

ITEM 44. Rescind and reserve subrules **65.103(2)** and **65.103(3)**.

ITEM 45. Amend rule 567—65.104(455B,459A) as follows:

567—65.104(455B,459A) NPDES permits.

65.104(1) *Existing animal feeding operations holding an NPDES permit* Who must seek coverage under an NPDES permit. Animal feeding operations which hold a valid NPDES permit issued prior to September 14, 2005, are not required to reapply for an NPDES permit. However, the operations are required to apply for permit renewal in accordance with subrule 65.104(10). The following is adopted by reference: 40 CFR 122.23(a) and (d).

65.104(2) *Existing animal feeding operations not holding an NPDES permit* Land application discharges from an existing animal feeding operation that is subject to NPDES permit requirements. Animal feeding operations in existence prior to April 14, 2003, which were defined as CAFOs under rules that were in effect prior to April 14, 2003, but which have not obtained a permit, should have applied for an NPDES permit by April 14, 2003. Animal feeding operations in existence on April 14, 2003, which were not defined as CAFOs under rules that were in effect prior to April 14, 2003, shall apply for an NPDES permit no later than July 31, 2007. The following is adopted by reference: 40 CFR 122.23(e).

65.104(3) *Expansion of existing animal feeding operations* When an owner or operator of an existing animal feeding operation must seek coverage under an NPDES permit. A person intending to expand an existing animal feeding operation which, upon completion of the expansion, will be defined as a CAFO shall apply for an NPDES permit at least 90 days prior to the scheduled expansion. Operation of the expanded portion of the facility shall not begin until an NPDES permit has been obtained. The following is adopted by reference: 40 CFR 122.23(f).

65.104(4) *New animal feeding operations* Duty to maintain permit coverage. A person intending to begin a new animal feeding operation which, upon completion, will be defined as a CAFO shall apply for an NPDES permit at least 180 days prior to the date operation of the new animal feeding facility is scheduled. Operation of the new facility shall not begin until an NPDES permit has been obtained. The following is adopted by reference: 40 CFR 122.23(g).

65.104(5) *Permits required as a result of departmental designation* No discharge certification option. An animal feeding operation which is required to apply for an NPDES permit as a result of departmental designation (in accordance with the provisions of 567—65.103(455B,459A)) shall apply for an NPDES permit within 90 days of receiving written notification of the need to obtain a permit. Once application has been made, the animal feeding operation is authorized to continue to operate without a permit until the application has either been approved or disapproved by the department, provided that the owner or operator has submitted all requested information and promptly taken all steps necessary to obtain coverage. The following is adopted by reference: 40 CFR 122.23(i) and (j).

65.104(6) *Voluntary permit applications.* Applications for NPDES permits received from animal feeding operations which are not defined as CAFOs will be acknowledged and returned to the applicant. NPDES permits will not be issued for facilities which are not defined or designated as CAFOs.

65.104(7) **65.104(6)** *Application forms and requirements.* An application for an NPDES permit shall be made on a form provided by the department. Form 34 as specified in 567—paragraph 60.3(2)“c.” The application shall be complete as specified in 567—paragraph 60.4(2)“a” and shall contain detailed information as required by the department. Applications shall include a nutrient management plan as required in rule 567—65.112(459A). Applications involving AT systems shall include results of predictive computer modeling as required by 65.110(6)“a.” The application shall be signed by the person who is legally responsible for the animal feeding operation and its associated manure or process wastewater control system, and as specified in 567—subrule 64.3(8). At a minimum, the application must contain all information required in 40 CFR 122.21(i).

65.104(7) *Notice and public participation.* Notice and public participation in the NPDES permit process shall comply with the requirements set forth in 567—64.5(455B).

65.104(8) *Compliance schedule.* When necessary to comply with a standard which must be met at a future date, an NPDES permit shall include a schedule for modification of the permitted facility to meet

the standard in accordance with 567—subrule 64.7(4). The schedule shall not relieve the permittee of the duty to obtain a construction permit pursuant to rule 567—65.105(459A).

65.104(9) Permit conditions. ~~NPDES permits shall contain conditions required by 40 CFR Section 122.41 and conditions considered necessary by the department to ensure compliance with all applicable rules of the department, to ensure that the production area and land application areas are operated and maintained as required by Iowa law, to protect the public health and beneficial uses of waters of the United States, and to prevent water pollution from manure storage or application operations. Any more stringent conditions of 2005 Iowa Code Supplement chapter 459A, 567—subrule 62.4(12), and this chapter that apply to animal feeding operations shall govern. For CAFOs that maintain cattle, swine, or poultry, the following conditions shall be included: The following is adopted by reference: 40 CFR 122.42(e).~~

a. Nutrient management plan. ~~Open feedlot CAFOs shall comply with the requirements of 567—65.112(459A) and any additional nutrient management plan requirements for CAFOs in these rules by December 31, 2006 shall comply with the terms of the CAFO’s site-specific nutrient management plan as specified in 65.112(12). CAFOs that seek to obtain coverage under an NPDES permit issued after December 31, 2006, shall have a nutrient management plan developed and implemented upon the date of permit coverage. CAFOs that make changes to the CAFO’s nutrient management plan shall also comply with the procedures set forth in 65.112(13).~~

b. Inspections and record keeping.

(1) Visual inspections. Routine visual inspections of the CAFO production area must be conducted. At a minimum the following must be visually inspected:

1. Weekly inspections of all storm water diversion, runoff diversion structures, and devices ~~channelling~~ channeling contaminated storm water to the open feedlot structure.

2. No change.

(2) and (3) No change.

c. No change.

d. Minimum monitoring requirements for AT systems. ~~During the first two years of operation term of the initial NPDES permit~~ of an AT system, the following minimum monitoring will be required:

(1) to (3) No change.

(4) Soil sampling.

1. No change.

2. Annual sampling. One sampling site shall be established in each cell of a VTA and VIB in an area which is expected to receive the greatest amount of open feedlot effluent. Soil samples shall be taken from each site prior to initiating discharge of open feedlot effluent into the VTA or VIB and shall be repeated annually. Each sample shall represent a composite of 10 to 12 individual samples taken to a 6-inch depth, and analyzed for P using either the Olsen or Mehlich-3 method and for pH.

Monitoring requirements for an AT system following the ~~initial two-year operation period term of the initial NPDES permit~~ will be determined at the time the NPDES permit for the operation is due for renewal.

e. and f. No change.

g. Quarterly reporting requirements for CAFOs with AT systems. A permittee with an AT system must submit quarterly reports by April 10, July 10, October 10, and January 10, following the respective calendar quarters. The quarterly reports shall provide all of the following information:

(1) to (3) No change.

(4) Results of laboratory analyses (as listed in 65.104(9)“d”(1)) of discharge samples for each date a discharge from the production area or the AT system occurred. If the results of laboratory analyses are not available by the due date of the quarterly report, the results shall be provided with the following quarter’s report.

(5) Results of laboratory analyses (as listed in 65.104(9)“d”(3)) of samples taken from the groundwater monitoring wells or piezometers. If the results of laboratory analyses are not available by the due date of the quarterly report, the results shall be provided with the following quarter’s report.

h. No change.

65.104(10) Permit renewal for permits involving the use of AT systems.

a. General requirements. An NPDES permit may be issued for any period of time not to exceed five years. An application for renewal of an NPDES permit must be submitted to the department at least 180 days prior to the date the permit expires. Each permit to be renewed shall be subject to the rules of the department in effect at the time of renewal. A permitted animal feeding operation which ceases to be a CAFO will be exempted from the need to retain an NPDES permit if the permittee can demonstrate to the satisfaction of the department that there is no remaining potential for a discharge of manure that was generated while the operation was a CAFO, other than agricultural storm water from land application areas.

b. Permits involving use of AT systems.

(1) *a.* During the first two initial years of operation of an AT system, a permittee will ~~may~~ be issued a two-year ~~an~~ NPDES permit for a period of time less than five years. Renewal of this permit is contingent upon proper operation and maintenance of the AT system, submittal of all required records and reports, and demonstration that the AT system is providing an equivalent level of performance to that achieved by a containment system that is designed and operated as required by statute, 567—subrule 62.4(12) and Division II of this chapter.

(2) *b.* If departmental review of an AT system indicates the system is not meeting the equivalent performance standard, the permittee may either be required to make needed system modifications to enable compliance with this standard or be required to install a conventional runoff containment system. Open feedlot operations found to be in compliance with the equivalent performance standard will be issued a five-year NPDES permit which allows continued use of the AT system.

65.104(11) Permit modification, suspension or revocation. The department may modify, suspend, refuse to renew or revoke in whole or in part any NPDES permit for cause as specified in 567—subrule 64.3(11). ~~Any more stringent requirement pursuant to 40 CFR Section 122.62, 122.63 or 122.64 shall control. Cause for modification, suspension or revocation of a permit may include the following:~~

- ~~*a.* Violation of any term or condition of the permit.~~
- ~~*b.* Obtaining a permit by misrepresentation of fact or failure to disclose fully all material facts.~~
- ~~*c.* A change in any condition that requires either a temporary or permanent reduction or elimination of the permitted discharge.~~
- ~~*d.* Failure to retain, make available, or submit the records and information that the department requires in order to ensure compliance with the operation and discharge conditions of the permit.~~
- ~~*e.* A determination by the department that the continued operation of a CAFO constitutes a clear, present and impending danger to public health or the environment.~~

65.104(12) Effluent limitations and standards. The following is adopted by reference: 40 CFR 412.

ITEM 46. Amend paragraph **65.105(4)“a”** as follows:

a. Plan review criteria. Review of plans and specifications shall be conducted by the department to determine the potential of the settled open feedlot effluent basin or AT system to achieve the level of control being required of the open feedlot operation. Applicable criteria contained in federal law, state law, these rules, Natural Resources Conservation Service design standards and specifications, unless inconsistent with federal or state law or these rules, and United States Department of Commerce precipitation data will be used in the review. If the proposed facility plans are not adequately covered by these criteria, applicable criteria contained in current technical literature shall be used. For medium CAFOs and designated CAFOs, the construction design standard shall be best professional judgment as determined by the department on a case-by-case basis pursuant to Section 402(a)(1)(B) of the Act and as defined in 40 CFR 125.3(c)(2) and 125.3(d).

ITEM 47. Amend paragraph **65.110(7)“i”** as follows:

i. Depth to sands, gravels, or glacial outwash. A VTA is not allowed if the depth to sands, gravels, or glacial outwash is less than six feet. A soils investigation that documents sands found are in isolated sand lenses that will not have a significant impact on subsurface water flow or groundwater groundwater quality shall not prohibit use of the site.

ITEM 48. Amend subrule 65.112(7) as follows:

65.112(7) Public notice.

a. No change.

b. The notice for public comment shall include all of the following:

(1) to (6) No change.

For public notice requirements for NPDES permits, see 65.104(7).

ITEM 49. Adopt the following **new** subrules 65.112(12) and 65.112(13):

65.112(12) Terms of a nutrient management plan. The following is adopted by reference: 40 CFR 122.42(e)(5)(i) and (ii).

65.112(13) Changes to a nutrient management plan. The following is adopted by reference: 40 CFR 122.42(e)(6).